

Litigating Land Rights for Minorities and Indigenous Peoples: Successes and Challenges

Lucy Claridge

Head of Law

Minority Rights Group International

www.minorityrights.org

Introduction

- MRG strategy: Challenge the dispossession of minorities and indigenous peoples' land and natural resources, ensure the legal recognition of customary title, as well as equitable benefit from any development of those lands and resources
- *CEMIRIDE & MRG (on behalf of Endorois Welfare Council) v Kenya*, 276/03; adopted February 2010
- Post-Endorois:
 - securing implementation of ruling
 - enhancing the value of the precedent
- *Commission v Kenya* (006/12) before ACtHPR (Ogiek case)
- *Mondorosi, Sukenya & Soitsambu Village Councils v Tanzania Breweries Ltd, Tanzania Conservation Limited, Ngorongoro District Council, Commissioner for Lands & AG* (Sukenya Farm case on behalf of Maasai in TZ courts; related 1782 action in US courts)





Endorois decision: implementation

- Build wider capacity of community to understand decision & the negotiation process
- Implementation in practical context: what do the Endorois want? And what is realistic?
- Continued involvement of ACHPR: implementation hearing, resolution issued at 54th Session; EWC observer status
- Lake Bogoria UNESCO designation: submission to WHC/IUCN & SoC report leading to MoU
- UPR & HRC; UN Social Forum
- Local level advocacy: county government; MPs
- Referral to ACtHPR? Mandamus in Kenyan courts?



14 12 2012

Ogiek case

- Scattered community numbering approx 30,000 in Mau Forest & others in Mt Elgon; distinct culture, religion and language
- ACHPR case (Articles 1, 2, 4, 8, 14, 17, 21, 22) lodged 2009; referred to ACtHPR in 2012
- Role of Ogiek as conservationists
- Provisional measures order issued March 2013
- Procedural challenges:
 - role of victim/ original complainant
 - closure of pleadings
- Hearing due March 2014; postponed at request of GoK
- Learning from *Endorois*: specific & detailed reparations request





Sukenya Farm case

- Maasai land in Loliondo, N Tanzania, sold to parastatal brewery company in 1980s but hardly cultivated (12,600 acres)
- Sold to Thomson Safaris (TCL) in 2006: conflict breaks out
- Lack of access to water/ grazing land; violence and intimidation against Maasai
- Divide and rule tactics by TS
- Action brought in TZ courts in 2010; dismissed in 2013
- New action brought in 2013 with support of all 3 villages; injunction application dismissed 2014
- 1782 action successfully brought in US courts v TS, April 2014
- Responding to TS propaganda: film
- Mediation? – land / benefit sharing models